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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Local Exchange Carrier Line)
Information Database)

CC Docket No. 92-24

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS ON DIRECT CASES

The Competitive Telecommunications Association ("CompTel"),¹ pursuant to the Commission's Order Designating Issues For Investigation² in the above-captioned docket, hereby submits its comments on the direct cases filed by various local exchange carriers ("LECs")³ addressing the lawfulness of their Line Information Database ("LIDB") tariffs. CompTel will confine its comments to the single issue of whether the proposed limitations on the LECs' liability for validation errors and fraudulent calls raise

¹ CompTel is the principal industry association of the nation's competitive interexchange telecommunications carriers ("IXCs"), with approximately 120 member companies, including large nationwide interexchange carriers as well as scores of smaller regional carriers.

² DA 92-347 (released March 20, 1992) ("Investigation Order").

³ Direct Case of the Ameritech Operating Companies; Direct Case of Bell Atlantic; Direct Case filed by BellSouth Telecommunications, Inc.; Direct Case of the GTE Telephone Operating Companies; Direct Case of Pacific Bell; The Southern New England Telephone Company Reply to Issues Designated for Investigation; Company Direct Case filed by Southwestern Bell Telephone Company; Direct Case of the United Telephone Companies; and Direct Case of U S West Communications, Inc., all filed April 21, 1992.

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questions of unlawful discrimination and related concerns vis-a-vis certain inconsistent provisions in the Mutual Card Honoring Agreements ("MHAs") between AT&T and most, if not all, of the same LECs.

For the past several years, CompTel has participated vigorously in proceedings before the Commission to promote competitive equity in AT&T and LEC practices associated with operator assisted calling. Most recently, in CC Docket No. 91-115, the FCC found at the urging of CompTel and others that LIDB access and call validation service in general are common carrier communications services subject to Title II of the Communications Act, 47 U.S.C. Title II.⁴ As a result, those services must be provided by LECs on a tariffed, non-discriminatory basis to all IXCs, consistent with the agency's finding in the CBT Order that LEC "provision of access to validation data . . . is . . . subject to the requirements of Section 202(a) of the Communications Act, 47 U.S.C. § 202(a)."⁵ The results of this investigation -- and the Commission's success in implementing this fundamental

⁴ Report and Order and Request for Supplemental Comment, CC Docket No. 91-115, FCC 92-168 (released May 8, 1992) ("LIDB Order").

⁵ Cincinnati Bell Telephone Company, 6 FCC Rcd 3501, 3503 (1991). Section 202(a) of the Act prohibits "unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service" as well as the giving of any "unreasonable preference or advantage to any particular person"

non-discrimination principle -- will be critical to the protection of competition in the market for IXC services.

In its Investigation Order, the FCC sought further detail from the LECs about their LIDB service offerings including, inter alia, information concerning "LEC liability for erroneous information in the database."⁶ In response to that request, the LECs uniformly explained that, absent willful misconduct, their liability to LIDB access service customers for providing erroneous validation information (and for fraudulent calling card calls generally) "is limited to an amount equal to the charge to the customer for processing the validation query."⁷ They likewise claim that this limitation is consistent with their treatment of other common carrier services they provide.⁸ Under the LECs' exculpatory tariff provisions, an IXC accepting a LEC calling card for a call on its network after receiving the appropriate validation from the LEC bears the entire risk that the charges for that call will prove to be uncollectible.

In contrast, in the MHAs which CompTel understands govern the calling card billing and validation relationships between AT&T and most LECs, the LECs are reportedly required

⁶ Id., ¶ 2, p. 2.

⁷ NYNEX Direct Case at 5; accord, e.g., U S West Direct Case at 7; GTE Direct Case at 4.

⁸ E.g., NYNEX Direct Case at 4-5; U S West Direct Case at 7; Ameritech Direct Case at 6.

to buy "the accounts receivable associated with calls charged to [the LECs' calling] card[s]" which utilize AT&T's network.⁹ The shifting of the risk of loss from AT&T to the LECs through the MHAs is confirmed by the redacted standard MHA text provided by AT&T,¹⁰ as well as by the opposition of BellSouth to AT&T's direct case in the OCP discounts investigation.¹¹ Thus, under the MHAs, the LECs rather than AT&T bear the risk that the charges for calls charged to LEC calling cards and carried on AT&T's network will be uncollectible.

The apparent disparity in treatment between AT&T and other IXC's in terms of the allocation of risk of loss arising from fraudulent calls associated with LEC calling cards establishes a prima facie case of discrimination in violation of Section 202(a) of the Communications Act.¹² This should be of particular concern to the FCC because of the prospect

⁹ AT&T Comments in Docket No. 91-115, Attachment B at 3-4.

¹⁰ See MHA, Section III.B.4.(b)(ii) and Attachment A-2, appended to AT&T's Comments in CC Docket No. 91-115.

¹¹ See Opposition to Direct Case, filed by BellSouth Telecommunications, Inc., on Feb. 27, 1992, in AT&T Communications, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 3380, 3537, 3542 and 3543 (filed Jan. 30, 1992), at 8 and n.11 (BellSouth's MHA "contains provisions which effectively limit IXC exposure to fraud and uncollectibles . . .").

¹² The validation services provided to AT&T and the other IXC's by the LECs are clearly "like" services for the purposes of Section 202(a).

that off-tariff MHA agreements between dominant carriers could subvert the non-discrimination goals of the LIDB tariffing requirement and the Part 69 access charge rules generally.¹³ Accordingly, the Commission should seek further information concerning AT&T's MHAs and the liability/indemnification provisions therein¹⁴ and require that any such unlawful discrimination be removed. Moreover, in evaluating possible remedies for the discrimination, the Commission should keep in mind that, because some LECs are requiring universal validation -- i.e., all calling card calls would have to be validated at substantial expense to IXCs -- it would be reasonable and just to require them to share in the potential liabilities arising from those calls.

The MHA indemnification provisions implicate a further issue presented in the LIDB tariff investigation, whether "the rate levels established in the [LIDB] tariffs [are] excessive?"¹⁵ In their attempts to justify the liability limitations they have adopted, the LECs contend that their

¹³ The possibility of LEC favoritism towards AT&T in this context is but one facet of the much larger problem created by AT&T's attempts to perpetuate the institutional advantages it enjoys in the 0+ market through its proprietary CIID card.

¹⁴ The FCC has already recognized that certain aspects of the relationships between AT&T and the LEC regarding calling cards remain shrouded in substantial mystery. LIDB Order, ¶ 84.

¹⁵ Investigation Order, ¶ 2, p.2.

acceptance of any greater exposure for fraud losses would require an increase in the rates for LIDB validation service.¹⁶ It follows that the LECs' indemnification of AT&T for such losses must similarly increase their validation costs.¹⁷ But, the recovery of those additional AT&T-specific costs in LIDB tariff rates paid by all IXCs would raise serious rate justification and competitive equity concerns.

It clearly would be unreasonable to require competitive IXCs to bear both the entire risk of fraudulent use of their own networks and any part of the costs of fraud on AT&T's network. Consequently, in its investigation of LIDB rates, the Commission should require the LECs to demonstrate that none of the costs attributable to their indemnifications of AT&T through the MHAs have been included in the cost basis for those LIDB rates.

For the foregoing reasons, CompTel urges the Commission to investigate the relationship between the MHAs and the LIDB tariffs with respect to the allocation of liability for erroneous validations and fraudulent calling on IXCs' and

¹⁶ E.g., NYNEX Direct Case at 5-6; Pacific Bell Direct Case at 3; Bell Atlantic Direct Case at 3..

¹⁷ AT&T asserts that "the vast majority of calling card fraud . . . relates to interLATA (rather than intraLATA) calling." AT&T Comments in CC Docket No. 91-115, Attachment B at 6. The costs to the LECs from their indemnification of AT&T are therefore likely to exceed substantially the cost to AT&T of indemnifying the LECs for its calling card calls accepted for use on their networks.

AT&T's networks, and to take action as appropriate to require the removal of any unlawful discrimination in connection with such offerings. In addition, the Commission should require the LECs to demonstrate that they have not included the costs of any MHA-based indemnification for AT&T in the rates for LIDB service paid by IXCs generally.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 1992, I caused copies of the foregoing "Comments of the Competitive Telecommunications Association on Local Exchange Carrier Direct Cases" to be mailed via first-class postage prepaid mail to the following:

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